In the Supreme Court
OF THE
United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,
vs.
ILLINOIS STATE BAR ASSOCIATION, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of Illinois

MOTIONS (A) FOR LEAVE TO FILE BRIEF AMICUS CURIAE, (B) FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT, AND BRIEF AMICUS CURIAE OF THE STATE BAR OF CALIFORNIA

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The State Bar of California, a public corporation, respectfully moves the Court for permission to file the attached brief *Amicus Curiae,* and assigns the following reasons.

The State Bar of California, a public corporation under the Constitution and laws of the State of Cali-

fornia, is one of the larger integrated bars. Its present active membership is approximately twenty-six thousand. Its present inactive membership is approximately two thousand. This State Bar is vested with broad responsibilities relating to the legal profession and to the practice of law. *See Cal. Bus. and Prof. Code,* Sections 6000 *et seq.*

Included in its functions are the duties of the Board of Governors to adopt and amend rules of professional conduct for attorneys, subject to the approval of the Supreme Court of California, to "enforce" such rules and the Statutes on this subject (subject to paramount authority of the Supreme Court of California), and to enforce statutory restrictions against unauthorized practice of law.

The Board of Governors of the State Bar is charged with the responsibility to:

> ". . . aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public." *Cal. Bus. and Prof. Code,* §6031.

For more than nine years, successive special committees of the State Bar of California have studied the complex problems presented by the so-called group legal services, and their reports are perhaps the pioneer published works of bar organizations on the subject. 34 Calif. St. Bar Jnl. 318; 35 Calif. St. Bar

Jnl. 710; 39 Calif. St. Bar Jnl. 639. The views of this State Bar, therefore, may be of some assistance to this Court in its resolution of what we consider the narrow issue involved in this case, not fully met in Petitioners' brief or in briefs of the several *amici*.

We have asked permission of the parties to file this brief *amicus curiae;* Counsel for Petitioners and Counsel for Respondents have refused consent.

Wherefore, The State Bar of California prays that the attached brief *amicus curiae* be permitted to be filed with this Court.

Dated: September 15, 1967.

Respectfully submitted,

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BRIEF OF THE STATE BAR OF CALIFORNIA AMICUS CURIAE

STATEMENT OF THE CASE

The Supreme Court of the State of Illinois has held that Petitioners, United Mine Workers of America, District 12, were engaging in the unauthor-

ized practice of law by the operation of a particular arrangement involving the employment by Petitioners of a part-time salaried attorney to represent Petitioners' members in certain phases of the processing of workmen's compensation cases. That holding was made on an appeal from a summary judgment entered upon motion and based upon a record disclosing, in considerable detail, just how the particular arrangement worked in practice.

The plan or arrangement that was before the Illinois Courts is generally described at pages 5 through 9 of Petitioners' brief under the heading of "The Facts." A further discussion of some of its features is also incorporated in our argument, especially at pages 8 through 13, *infra*.

Our brief is filed for the principal purpose of emphasizing (1) the interests which California and other states have in resolving the manifold problems often loosely grouped under the heading "Unlawful Practice of Law"; (2) that the several states, and California in particular, deal with various phases of these problems—including the representation of injured persons in workmen's compensation proceedings—in ways different from those adopted by Illinois; (3) that the problems are so complex, and the solutions being tried and suggested so divergent in direct and collateral effect, that meaningful evaluations can only be made of particular programs; (4) that the Court below could reasonably find, upon review of the particular plan of Petitioners, that the form of "representation" that it afforded was so in-

herently, necessarily or probably inadequate as to be contrary to the public interest, as well as the interest of the union members; and (5) that the record before this Court is grievously inadequate for any broad pronouncement as to constitutional protection of group legal services, or varieties thereof, or the constitutional limits of state power to regulate the unauthorized practice of law and to preserve the high standards of the legal profession.

We submit that on the record before this Court, the only issues to be decided are whether the Illinois Supreme Court could constitutionally rule that Petitioners' particular salaried attorney plan as it was actually conducted was contrary to the public interest and an unlawful practice of law, and, if so, whether the Illinois Court had the power to make the decree it did. This brief is directed to the first of these issues only.

ARGUMENT

I

IN THE PARTICULAR CIRCUMSTANCES SHOWN IN THIS RECORD, THE COURT BELOW COULD REASONABLY BELIEVE PETITIONERS' PLAN FOR LEGAL ASSISTANCE TO BE IMPROPER AND THEREFORE CLEARLY WITHIN ITS POWER TO PROHIBIT.

As we will show, in actual operation, the Illinois plan considered below lacked a true attorney-client relationship, involved an undesirable intermixture of union and attorney responsibilities, and created a substantial risk of inadequate legal representation.

It is this plan, as shown in actual operation by the record, that is properly to be reviewed by this Court, not some hypothetical or actual variant thereof, and not the concept of group legal services itself *(cf. United Public Workers v. Mitchell,* 330 U.S. 75). While it is not our purpose to review at length the evidence and facts judicially shown, the following facts are pertinent.

Under the plan, the part-time salaried attorney's responsibilities covered a large geographic territory and involved a very heavy annual case load. In one year (1964), four hundred and sixteen (416) applications were filed with the Commission in his name; four hundred and eighty-seven (487) were concluded. (R. 54.) His predecessor in a two and one-half year period (January 1, 1961-June, 1963) filed one thousand three hundred and eighteen (1,318) applications; one thousand three hundred and twenty-eight (1,328) were concluded (R. 60), for an average *annual* rate of five hundred and twenty-seven (527) "filings" and five hundred and thirty-one (531) closings. Average compensation payments to the injured workers or dependents per case were: 1964: 487 closed, total payments: $528,885.12 (R. 54), average: $1,083.95; January 1, 1961-June, 1963: 1,328 cases closed, total payments: $1,859,640.65 (R. 60), average: $1,400.33.[1]

[1]Published statistics indicate a high incidence of injury in coal mining and preparation. Both in average number of work injuries and severity, industry percentages are among the highest of the 42 occupations listed. *Statistical Abstract of the United States* (1966), U. S. Department of Commerce, p. 244.

The attorney (whose sole compensation, no matter how many his cases or how complex they might be, was his fixed annual salary) handled these cases at a cost of Twenty-Five Dollars and Forty-Six Cents ($25.46) per case for the current attorney, and Twenty-Three Dollars and Thirty-Four Cents ($23.34) for his predecessor.

The letter of employment of the attorney, dated September 26, 1963 (R. 19, 20) states that the attorney's duties were: "to see to it . . . *with the help of secretaries . . . and officers of local unions,* that no member or dependent loses his rights . . . by reason of failure to *avail himself* (of his rights) *in time.* Also, to represent him *before the Commission* if he desires your services." (R. 20, f. 25.) (Emphasis supplied.) The attorney's contractual duties were therefore apparently limited to assuring the timely filing of claims and representation of the claimant before the commission itself.

These functions were the only ones performed "before the Commission" by the attorney, except for negotiating settlements with opposing counsel at the time of the hearing on the claim (R. 45) and occasionally suggesting that the client obtain a further medical report (R. 42). It does not appear that either under his contract with the union, nor in actual practice, the attorney provided the claimants with the full representation which would normally be the obligation of an independent attorney to give his client, in the light of the peculiar facts and circumstances of the client's particular case.

The union form "Report to Attorney" (R. 16, 17) indicated on its face that the matter would be handled through the union. It contained no request by the individual worker for retention of the salaried attorney as his attorney, nor did it call to the worker's attention his right to retain, or the possible desirability of retaining, his own counsel. It does not even contain the name of the salaried attorney.

It specifically instructs the worker: "Do not make this report until *after demand* on the company has been made and either no compensation is paid, or not a sufficient amount." (R. 16.) (Emphasis supplied.) This language would tend to forestall or discourage the timely securing of legal advice and representation, as well as placing upon the injured worker, without assistance of counsel, the burden of framing the proper "demand" and that of determining whether or not "sufficient" compensation has been paid. Workers can hardly be presumed to be sufficiently well-versed in the intricacies of workmen's compensation law to be familiar with the requirements of the Compensation Act, or the potentials of their cases.

As this plan was operated, the union officers, employees and co-members, in many cases independently of the attorney, interviewed the injured workers and aided them in formulating facts. It was the president, secretary-treasurer, board member of Local District 4; board member of Local District 6; board member of Local District 7; the president's secretary in Springfield, the secretary in the West Frankfort office, an international special representative, a district

special representative, and un-named officers or members of local unions who were responsible for the union's legal aid program. (Ans. to Inter. 6, R. 56, 57.)

In making the "Report to Attorney" on the union form, "members, either by themselves, or with the assistance of some other member, or officer, of the local union, prepare, sign and file" the report. (Ans. to Inter. 8, R. 57.)[2] In most instances, the attorney had not seen the injured worker before he filed the application for adjustment. (R. 40.) Indeed, it appears that secretaries of the union, working from the "Report to Attorney," were authorized to complete the Application, sign the attorney's name, and forward it directly to the Industrial Commission. (Ans. to Inter. 12, R. 58; R. 36, 38, 40; Pet. Br. pp. 8, 9.)

A critical portion of workers' cases under compensation acts, of course, is the preparation and presentation of medical evidence. Under Petitioners' plan, however, the attorney made no particular preparation of the medical evidence. After the claim was filed, neither the union nor the attorney made arrangements for the obtaining of reports from doctors, other than requesting those of the company doctors. They relied upon what was done by the injured worker. He was instructed "that if *he obtains any*

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[2]Petitioners' answer to Inter. 11 states the practice thus:

"Sometimes another member or officer of the Local Union (interviews the injured worker). Occasionally a district executive board member. Interview may be had at the mine, the home of the injured person or of the officer who helped him with his accident report. The extent of the interview is determined by the nature of the injuries . . ." (R. 57, f. 83.)

medical assistance or *a report arising out of medical assistance* that was received from that accident, it would be helpful" (emphasis supplied) to the attorney, if the attorney could have a copy. (R. 41, f. 60.) Later, this statement was qualified by the attorney who stated: "I will on occasion suggest that perhaps in order to be properly prepared that *he* seek other medical attention. Sometimes . . . we feel that it would be helpful in developing the case . . . (or) we feel that maybe he hasn't had adequate medical attention. . . . I think that that would only be done by myself" (and not by union representatives). . (R. 42, f. 61.)

Even the preparation of the injured worker for his hearing before the Commission compared poorly with that an attorney would normally be expected to give even an incidental witness in a case properly handled. There was no planned personal conference between attorney and his "client" before the hearing. The record shows that, generally speaking, the only thing the worker would get would be a notice from the Commission to appear at a certain day and place. (R. 43, 44.)

Unless the attorney "needed him (the worker)—unless he (would) come in the Springfield or West Frankfort office," the first time the attorney would see the worker would be the day of the hearing. (R. 44.) The attorney did not even have a regular schedule to be in either office to facilitate interviews with his "clients" (R. 61, Answer to Inter. 40), though he claimed that it was known that he would be in the

West Frankfort office on certain days, and that many of the applicants came in and consulted with him prior to the hearing. Certainly not all did. (R. 43.)[3]

The files on the claims of the injured workers were not those of the attorney. He kept the file only while it was active, and then returned it to the office of Petitioners, where it was kept. (R. 48.) When the current attorney accepted his appointment, pending files initialed by his predecessor were simply turned over to him, apparently without consultation with the claimants. (R. 48.)

From this account, it should be clear: *First,* that under the plan here under review, the attorney normally had only minimal and indirect contact with the facts and potentials of the case; *second,* that the arrangement did not permit and in fact discouraged timely legal advice and active advocacy of the claims of particular workers, including the expenditure of substantial time on questions of fact or law where this might be required in the worker's interest; *third,* there was an intermixture of activity by union officers and employees and activity by the attorney, with the result that neither assumed clear-cut responsibility for safeguarding the workers' rights in a competent manner, and there were apparently no controls to in-

[3]At the hearing at DuQuoin, for example, there might be five or ten miner-applicants. (R. 43.) At that time, the attorney consulted with the counsel for the coal company in a sort of pre-hearing negotiation session, and made a recommendation. If the amount was not satisfactory, they went to hearing. (R. 45.) In some cases, the coal company had already paid the sum agreed upon, and a dismissal was filed, without the need for a settlement contract. (R. 45.)

sure that legal advice was given only by, or at the direction of, the attorney; and, *fourth,* the arrangement permitted confidential communications between attorney and client only on a fortuitous basis.

Certain other practical features of the plan should not be overlooked. In the first place, regardless of the competency of the part-time salaried attorney, the union placed practical limitations upon the services to be rendered him by the very terms of his employment. For the "flat" sum of twelve thousand four hundred dollars ($12,400.00), the attorney was expected to "handle the Workmen's Compensation cases in District 12". (R. 15, f. 18.) These averaged in excess of four hundred and sixteen (416) cases annually, and, as noted, at the low "average" cost of about twenty-five dollars ($25.00) per case. A similar arrangement had existed between the union and the former attorney. The arrangement strongly implies that the attorney's services were, and were expected to be, "routine" and on a "mass basis."

Further, the plan failed to make adequate provision for timely personal conferences—so vital to active advocacy and proper personal representation. The union did not even insist that the "current attorney" keep scheduled office hours, either at Springfield or at West Frankfort (where most of the miners were).

The plan took no account of problems arising from distances and territory covered,[4] except in the "re-

[4]The main office of Petitioners, with salaried office personnel, was in central Illinois at Springfield (where the main office of the Illinois Industrial Commission was located). (R. 56.) It was there

verse" sense that the attorney was expected to work from "files" on the basis of information not personally investigated or collated by him.

The plan made no provision for special handling of "difficult" cases, where the sums involved could be substantial—far in excess of the one thousand eighty dollar ($1,080.00) or fourteen hundred dollar ($1,400.00) average recovery shown by the record. Yet, it is contrary to common knowledge to assume that no such "difficult" cases existed in a hazardous industry where this union alone had eight thousand five hundred (8,500) active members, and its members' claims filed with the Commission averaged in excess of four hundred (400) a year.

The union did not set up the attorney as an independent entity with separate quarters and staff. Instead, the union maintained an anonymous and, so far as the record shows or implies, an unlicensed "Legal Department." It employed a basic form bearing this caption and strongly suggested that the union itself was attending to compensation matters, though with the aid of its lay personnel and attorney.

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that the salaried attorney had duties as a State Senator. (R. 31, 32.) Likewise, his own residence and office for the private practice of law were in the Springfield area, at Taylorville. (R. 41, 57.) The attorney had "assigned" office space in the main office of the union at Springfield (R. 35), and he could use Petitioners' office when he was in West Frankfort (R. 35). Many coal mines are located in southern Illinois, a considerable distance from the Springfield area. Local District 7 was headquartered at West Frankfort, where Petitioners maintained an office with one secretary paid by the union. (R. 56.) Local District 6 was headquartered at nearby DuQuoin, where an unstaffed office was maintained by Petitioners. (R. 56.) Other cities or communities in the area include Herrin, Carbondale and Marion. Local District 4 maintained an unstaffed office at Taylorville (in the Springfield area). (R. 55.)

"Free choice" of counsel, if not discouraged, was not assured. While the attorney himself was under instructions to turn over the "file" when applicant was represented by other counsel (R. 20), in many cases there was no contact between "client" and attorney until the "hearing." In other cases, the contact was after the Application had been filed. Only in some cases was there any contact before the "hearing."

So little was thought of the desirability or need for establishing an independent attorney-client relationship, as contemplated by the 1963 letter of employment, that no separate request or personal contact was deemed necessary. The union form contained no place for such a request. It was "presumed" by the attorney that because a "Report to Attorney" had reached him, the union member desired his services. (R. 39.)

These circumstances, in combination, surely must be sufficient to warrant the conclusion that this particular plan in actual operation was not one whereby the union merely defrayed or contributed to the payment of the fees of an attorney individually chosen by the member. Instead, the union here undertook to practice law through various of its officers, clerks and a part-time salaried attorney. The Court below so held.

It is the constitutionality of that holding which is at issue here, not the propriety of the lower Court's reasoning, not the merits of other materially different

plans for group legal services, and not whether, with proper safeguards and improvements, some other plan was beyond the power of the State to prohibit.

II

THE CONSTITUTIONAL RIGHTS ESTABLISHED BY NAACP v. BUTTON, 371 U.S. 415, AND BROTHERHOOD OF RAILROAD TRAINMEN v. VIRGINIA, 377 U.S. 1, DO NOT INCLUDE THE RIGHT TO OPERATE OR PARTICIPATE IN THE LEGAL SERVICE PLAN SHOWN IN THIS RECORD.

The elements of free speech and assembly loomed so large in the *Button* and *Brotherhood* cases as to render insignificant the incidental solicitation and advertising of legal services upon which Virginia bottomed its power to regulate. Those precise rights to consult with one another, and to be advised of the desirability of retaining competent counsel, and of recommending the names of such counsel are clearly recognized by the Court below. (R. 103.)

Moreover, the arrangements in *Button* and *Brotherhood* resulted in the formation of a traditional attorney-client relationship and apparently in highly competent services from attorneys who were specialists in the fields involved.

There was no showing in those cases, as there is in this record, of so casual, indirect and distant a relationship between the attorney and the claimant as to raise grave doubts that there existed the personal and confidential relationship of attorney-client, or the trust and confidence upon which that relationship

should be founded. The values which flow from that kind of relationship surely are worthy of protection, not only to preserve the obvious advantages to the client, but as a bulwark against the degeneration of the legal profession into a mere commercial enterprise which "might threaten the moral and ethical fabric of the administration of justice." (377 U.S. 1, 6-7.)

In addition, as we have noted, there were other aspects of the plan as it was operated, which are properly matters of state concern: the volume of cases which the part-time attorney was required to handle, the fixed-salary arrangement without regard to the amount of time or effort which the exigencies of the individual claims might require, the extent to which secretaries and union officials participated in giving legal advice and assistance without any substantial supervision by any attorney, absence of any real freedom of choice by the claimant as to who his lawyer would be, the probability that claimants were not in fact receiving adequate representation, and the absence of any safeguards to minimize conflicts of interest which might arise between the union and any particular claimant.

None of these evils was present in *Button* or *Brotherhood* where, indeed, it appeared that alternative methods of securing legal services were either non-existent or less than adequate.

The broad range of permissible state regulation, when these and similar evils are shown, is recognized in *Button* and *Brotherhood,* and in many other de-

cisions of this Court. *Martin v. Walter,* 368 U.S. 25; *Dent v. West Virginia,* 129 U.S. 114; *Graves v. Minnesota,* 272 U.S. 425; *Kovrak v. Ginsburg,* 358 U.S. 52; See *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483; *Ferguson v. Skrupa,* 372 U.S. 726.

Contrary to the suggestions of other *amici,* this case does not involve or affect programs of legal aid to the indigent (which were expressly excluded from the reasoning of the Court below and in no way affected by its decree), the operations of civil rights legal groups, the burgeoning neighborhood law office programs financed by the Federal Government, or the vast variety of multi-party legal representations which differ in material ways from the particular plan of Petitioners that was enjoined by the Court below.

In reviewing the Illinois judgment, it is important to note, *first,* the individual rights sought to be enforced through the part-time salaried attorney employed by the union are state-created rights; *second,* in the creation of such rights, Illinois has carefully provided for governmental agency regulation of attorney's and other fees (48 Smith-Hurd Illinois Ann. Stats. §138.16), for simplicity of procedures (ibid., §§138.16, 138.17) and for waiver of commission fees and charges for needy applicants (ibid., §138.20); *third,* in the creation of such rights, the State has not expressly provided that a labor organization or other group itself may enforce the claims of its members and has required representation by an attorney where the applicant does not "appear" *pro se; fourth,* there

is no proof of unavailability of competent members of the Illinois Bar to represent the union members in their claims at a reasonable fee, fixed by the State Commission, or even of unavailability of competent members of the Illinois Bar to undertake such representation for a minimal fee or, in meritorious cases, for no fee; *fifth,* there is no proof that "legal aid" in meritorious cases is not available to eligible union members under legal assistance plans of community action programs under the Economic Opportunity Act (42 USC Sections 2782-2789), and *sixth,* the present record does not indicate that Petitioners made any efforts in the Courts below to suggest any changes in or additions to their salaried attorney plan which might have obviated its objectionable features, apparently being determined to stand on their contention that the plan was constitutionally immune from any regulation whatsoever.

Moreover, if the decree below is affirmed, Petitioners are still entitled, under Illinois law, to seek a modification of the decree at any time upon a factual showing that their legal service plan has been implemented in ways that avoid the difficulties and evils present in the current plan. *Material Service Corporation v. Hollingsworth,* 415 Ill. 284, 112 N.E. 2d 703; *Ill. Central R.R. Co. v. Commerce Commission,* 387 Ill. 256, 56 N.E. 2d 432; c.f. *Field v. Field,* ..... Ill. 2d ....., 223 N.E. 2d 551.

That some types of regulations are desirable, if not essential, over the almost infinite varieties of plans for group legal services is evident and conceded by

the most fervent advocates of such plans. (See e.g., *Amici Brief of NAACP Legal Defense and Educational Fund, Inc., et al.*, pp. 40-44; *Report of California Committee on Group Legal Services* (1964), 39 Calif. St. Bar Jnl. 639, 723, 733.)

Both the factual and legal predicates for sound relaxation of traditional statutes and rules governing practice of law and attorney-client relationship in civil matters seem far from settled. In California, for example, the 1964 (third) study committee Report made certain specific recommendations. But, at the same time, it recommended a "broad scale survey of the needs of the public for legal services." (39 Calif. St. Bar Jnl. p. 729.) The committee thereafter, with support of the governing body, unsuccessfully sought foundation funds for the survey. To the committee, it appeared there was no basis for limiting the "association" authorized to provide legal services "to particular types of non profit associations or even to non profit associations in general." (ibid., p. 725.) The committee considered that a limitation to legal services of "common interest" to members of the group was difficult of "intelligent definition" and had only "superficial appeal" (ibid., p. 726). In an attempt to solve the "promoter" problem, the committee recommended that "any group which undertakes to provide legal services for its members shall have a bona fide purpose other than the provision of legal services" (ibid., p. 723), (thereby opening the door to associations such as motorists' associations, mutual insurance companies and mutual savings and loan as-

sociations when authorized by their own organic laws). The specific "regulations" would have permitted "availability of legal services, but not the names of attorneys, (to be) used in a dignified manner in soliciting membership in the group" (without further clarification) and would have permitted "the name, address and qualifications of each recommended attorney (to be) announced in a dignified manner to members of the group only." (ibid., p. 724.) The committee recommendations were silent as to many details, e.g., provisions assuring adequacy of legal services, avoidance of "mass handling," precise definition and "holding out" of legal services offered, liability or non liability of employer for negligence or other acts of the attorney, confidentiality of communications and files, right of a member to employ other counsel and restrictions upon outside practice of employed attorneys. Nor was any express recommendation made as to a major problem pointed out by a dissenting member, i.e., the effect of "group plans" upon the Bar generally, in view of present restrictions against solicitation and advertising (ibid., p. 737). The committee alternatively suggested a "certification" method, but outlined no specific standards (ibid., p. 733).

The Report reveals the obvious difficulties and policy questions involved in formulating appropriate regulations, quasi penal in nature, that would govern in the divers and often complex factual situations outlined by the Report. The latest action of the Board of Governors was in May, 1967 when it determined not

to take "any action *at this time* to modify the Rules of Professional Conduct." The assigned reasons were several, but included the pendency of the present case, and pending studies of two committees of the American Bar Association on changes in the Association's Canons of Professional Ethics and availability of legal services. See *Newsletter, State Bar Reports (Calif.)*, May-June, 1967, p. 1; see also 40 Calif. St. Bar Jnl. (1965) p. 325.

Union "referral plans" and union "legal service" plans, of course, are but one segment of an extremely broad subject. This record is a narrow one; it is devoid of evidence, pro or con, on broad factual issues which troubled the California Committee.

The practice in Great Britain is instructive in showing the rationality of regulations designed to maintain the very high ethical standards of the bar in that country, to preserve the values of a true attorney-client relationship, and at the same time, to recognize the laudable and legitimate interests of labor unions, similar associations, and their members in having available adequate legal advice and assistance at an economical price.

In *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 7, the Court refers to the practice in Great Britain whereby "unions do not simply recommend lawyers to members in need of advice; they retain counsel, paid by the union, to represent members in personal lawsuits . . ."

The fact is, however, that such practices are very carefully circumscribed, both as to the kinds of mat-

ters which may be financed in this manner and as to the conduct of the barristers and solicitors. Barristers are flatly prohibited from undertaking "to represent any person, authority or corporation in all their court work for a fixed annual salary"; and it is highly doubtful that a barrister could be employed on a salaried basis by a union or other organization. W. W. Boulton, *Conduct And Etiquette At The Bar of England and Wales* (London, 1965), pp. 4-5.

While solicitors are less restricted, nevertheless they are permitted to accept retainers from unions for performance of services to individual members only in limited classes of cases; they may not hold themselves out as willing to do work for union members at a bargain rate, or less than the scale fee; and are subject to very strict rules prohibiting them from allowing unions or others to tout or advertise their services. Sir Thomas Lund, *The Professional Conduct And Etiquette Of Solicitors* (London, 1960), pp. 26-28, 34, 134.

If, as appears clear, some regulation by the states is appropriate to preserve the traditionally high moral and ethical standards of the profession and of the administration of justice, one questions whether this record presents the issues in sufficient breadth or focus to permit this Court to define in a meaningful way, on the one hand, the extent to which Petitioners may be entitled to constitutional protection for some kind of plan involving a salaried attorney to handle the industrial accident claims of their members, and on the other, the scope of state power to impose rea-

sonable regulations on the manner in which such plans may be operated.

CONCLUSION

For the reasons stated, the Illinois decree should be affirmed or the writ dismissed for want of a substantial Federal question.

Dated: September 15, 1967.

Respectfully submitted,

JOSEPH A. BALL,
JOHN J. GOLDBERG,
SAMUEL O. PRUITT, JR.,
Attorneys for The State Bar of California, Amicus Curiae.

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On Writ of Certiorari to the Supreme Court of Illinois

MOTION OF AMICUS CURIAE FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Movant The State Bar of California respectfully moves the Court for leave to participate in the oral argument of the within case on the following grounds:

1. A like motion has been made on behalf of the N. A. A. C. P. Legal Defense and Educational Fund,

Inc., and the National Office for the Rights of the Indigent. If permission should be granted for such Amicus, permission should also be granted to this Amicus, whose position on the merits is opposed to that of the other Amicus.

2. This case now comes before the Court following its landmark decisions in the *Button* and *Brotherhood* cases. Determination of the proper scope of the issues herein, and the proper resolution of such issues, present questions of importance to the public, the Courts and the legal profession of this nation.

Wherefore, Movant respectfully prays that leave be granted to participate in oral argument.

Dated: September 15, 1967.

Respectfully submitted,

JOSEPH A. BALL,
JOHN J. GOLDBERG,
SAMUEL O. PRUITT, JR.,
Attorneys for The State Bar of California, Amicus Curiae.